

**DISTRICT COURT OF THE UNITED STATES  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**1:16-cv-406-RJC**  
**(1:09-cr-57-RJC-1)**

**BRYAN KEITH NOEL,**

**Petitioner,**

**VS.**

**UNITED STATES OF AMERICA,**

**Respondent.**

## ORDER

**THIS MATTER** is before the Court on the following pro se motions filed by Petitioner Bryan Keith Noel, following this Court's dismissal of his 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence as untimely:

- (1) Petitioner’s “Combined Motion and Brief to Obtain Relief from a Judgment in a Habeas Proceeding Pursuant to the Federal Rules of Civil Procedure, Rule 60(b)” [Doc. 46];
- (2) Petitioner’s letter enclosing his Rule 60(b) motion, which the Court construes as a motion to attach exhibits from Civil Case No. 1:17-cv-00273 to his Rule 60(b) motion” [Doc. 47];
- (3) Petitioner’s “Motion for Leave to Amend Pending Rule 60(b) Motion” [Doc. 48], together with an “Amended Brief” [Doc. 48-1];
- (4) Petitioner’s “Motion to Conduct Discovery in Accord with Rule 6 Governing § 2255 Proceedings and Request to Expand the Record Pursuant to Rule 7 Governing § 2255 Proceedings with Request for Evidentiary Hearing” [Doc. 50]; and
- (5) Petitioner’s “Motion for Leave to Amend Pending Rule 60(B) Motion” [Doc. 52], together with his “Amended Combined Motion and Brief to Obtain Relief from a

Judgment in a Habeas Proceeding Pursuant to the Federal Rules of Civil Procedure, Rule 60(b)” and various exhibits [Docs. 52-1, 52-2].

This is now the fourth time Petitioner moves the Court to revisit its February 8, 2017 Order [Doc. 13] dismissing Plaintiff’s § 2255 Motion to Vacate as untimely. [See Docs. 22, 33, 36].

The Court will grant Petitioner’s motion to attach exhibits from Civil Case No. 1:17-cv-00273 [Doc. 47], insofar as the Court takes judicial notice of those exhibits. The Court will deny Petitioner’s Motion for Leave to Amend Pending Rule 60(b) Motion [Doc. 48] as moot. The Court will grant Petitioner’s Motion for Leave to Amend Pending Rule 60(B) Motion [Doc. 52].

The Court will deny Petitioner’s Amended Motion for Relief, as the Court correctly found that Petitioner’s Section 2255 motion to vacate was untimely. The Court further notes that Petitioner’s timeliness and actual innocence arguments are wholly without merit, as previously addressed by the Court in Docket Nos. 22, 33, and 36. Indeed, on May 30, 2018, the Fourth Circuit Court of Appeals dismissed Petitioner’s appeal of this Court’s dismissal of Petitioner’s motion to vacate as untimely. [See Doc. 30]. The Court will also deny Petitioner’s motion for discovery [Doc. 50] for the same reasons that the Court denied Petitioner’s Amended Motion for Relief.

**IT IS, THEREFORE, ORDERED** that:

- (1) Petitioner’s Combined Motion and Brief [Doc. 46] is **DENIED** as moot.
- (2) Petitioner’s motion to attach exhibits to his Rule 60(b) motion [Doc. 47] is **GRANTED** in accordance with the terms of this Order.
- (3) Petitioner’s Motion for Leave to Amend [Doc. 48] is **DENIED** as moot.
- (4) Petitioners Motion for Leave to Amend [Doc. 52] is **GRANTED**.
- (5) The Clerk is respectfully directed to file Petitioner’s “Amended Combined Motion and Brief to Obtain Relief from a Judgment in a Habeas Proceeding Pursuant to the Federal


Rules of Civil Procedure, Rule 60(b)” together with Exhibits thereto [Docs. 52-1, 52-2] as Petitioner’s “Amended Combined Motion and Brief.”

(6) The Clerk is also respectfully instructed that Petitioner’s newly docketed Amended Combined Motion and Brief is **DENIED**.

(7) Petitioner’s Motion to Conduct Discovery [Doc. 50] is **DENIED**.

**IT IS SO ORDERED.**

Signed: August 6, 2019

  
Robert J. Conrad, Jr.  
United States District Judge

